

**ASSEMBLY BILL**

**No. 1816**

**Introduced by Assembly Member Bermudez**

January 15, 2004

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An act to amend Section 2220.05 of the Business and Professions Code, relating to medicine.

LEGISLATIVE COUNSEL'S DIGEST

AB 1816, as introduced, Bermudez. Medical Board of California.

The Medical Practice Act provides for the regulation and licensing of physicians and surgeons by the Medical Board of California. Existing law requires the board to prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously, and identifies the types of cases that are to be given the highest priority. Existing law authorizes the board, by regulation, to prioritize other cases that are of a lower priority.

This bill would authorize the board to determine that it is unable to investigate lower priority cases. The bill would require the board to notify a consumer within 30 days if it determines upon initial review that it does not have appropriate jurisdiction over an allegation by the consumer, and to include references to other government or private entities that may have jurisdiction.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Sexual misconduct with one or more patients during a course of treatment or an examination.

(5) Practicing medicine while under the influence of drugs or alcohol.

(b) (1) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

1     (2) *To ensure that the resources of the board are available for*  
2 *expenditure in a manner consistent with the protection of the*  
3 *public as specified in this section, the board may determine that*  
4 *information or complaints relative to the cases involving*  
5 *allegations not listed in subdivision (a) cannot be investigated or*  
6 *prosecuted without detriment to the purpose of this section.*

7     (3) *If the board determines upon initial review that it does not*  
8 *have appropriate jurisdiction over an allegation made by a*  
9 *consumer under the law, the board shall notify the consumer of that*  
10 *fact within 30 days. That notification shall include references to*  
11 *other government or private entities that may have appropriate*  
12 *jurisdiction to effectively resolve the complaint or other grievance.*

13     (c) The Medical Board of California shall indicate in its annual  
14 report mandated by Section 2312 the number of temporary  
15 restraining orders, interim suspension orders, and disciplinary  
16 actions that are taken in each priority category specified in  
17 subdivisions (a) and (b).

